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before it could not, unless you put something in the place of the fence; if you wish the privilege of taking down the citizen's fence, you must substitute a cattle-guard in its stead, that will as effectually prevent the passage of stock as the *lawful fence*."

This cattle-guard, in the contemplation of our statute, is a complete bar to the passage of stock along the railroad's track where it passes through enclosed lands, and the only legitimate inquiry for the court is the *sufficiency* of the cattle-guard for this purpose. If the railroad says, as it seems in this case so successfully to have urged upon the court, that it cannot do it with consistency to its other duties to the public, then it may be answered: "That is your lookout; and since you ask to put the citizen in the danger of the loss of his property, you must assume that peril yourself, as one of the risks of your undertaking." It is but the application of the doctrine of *sic utere tuo ut alienum non laedas*.

D. C. O'FLAHERTY.

Front Royal, Va.

SET-OFF AGAINST A SET-OFF.

Editor Virginia Law Register:

In a recent action of assumpsit in the Corporation Court of Danville, upon a contract between plaintiff and defendant, to recover defendant's part of certain expenses provided for by the contract, the defendant pleaded by way of set-off items of expense which the plaintiff contended did not come within the purview of the contract; but if the court held defendant's items so pleaded to be good, then there were like items claimed by the plaintiff and not embraced in his account sued upon, which he desired to plead by way of *counter set-off*. The court refused to allow the plaintiff, in his replication to the plea of set-off, to assert his counter set-off, and held that the plaintiff must amend and enlarge his account filed with his declaration. This the plaintiff refused to do, because if he did so he would be estopped from objecting that the items covered by defendant's plea did not come under the contract sued upon. In fact, the court, ruled out of the case these items set up by defendant's plea, and therefore the question will not arise before the Supreme Court, where the case is to go upon other questions. But we submit to you and to your readers the interesting inquiry whether, in Virginia, a plaintiff cannot, to a plea of set off, interpose by way of replication, *counter set-offs*. We observe that in West Virginia the point has been provided for by statute. *Vide* 1 Barton Law Pr. p. 506, note 3.

Quære: Irrespective of statute, why cannot this be done in Virginia? It seems to us that, as under the statute the defendant's plea is tantamount to his bringing a suit, the same defenses should be allowed the plaintiff as if there were an independent suit for the amounts claimed by way of set-off.

BERKELEY & HARRISON.

Danville, Va.